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Defendants*

19 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

20 MS. L, et al.,

21 Petitioners-Plaintiffs,

22 vs.

23 U.S. IMMIGRATION AND CUSTOMS
24 ENFORCEMENT, et al.,

25 Respondents-Defendants.
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Case No. 18cv428 DMS MDD

**DEFENDANTS' RESPONSE TO MMM
PLAINTIFFS' OCTOBER 4, 2019
LETTER TO THE COURT, ECF NO. 480**

1 On September 10, 2019, Defendants filed their opposition to Plaintiffs'
2 Motion to Enforce Preliminary Injunction, ECF No. 464. In that filing, Defendants
3 articulated their position regarding parents who are separated based on a prosecution
4 for, and convictions of, 8 U.S.C. § 1326. *See* ECF No. 464 at 18 n.6 and 19 n.7. At
5 the September 20, 2019 hearing on Plaintiffs' motion, the Court inquired of *M.M.M.*
6 counsel whether the government's position implicated any issues in their case, and
7 *M.M.M.* counsel responded that they "would like to give that some thought." Sept.
8 20, 2019 Hearing Transcript at 69:16-17. The Court therefore gave *M.M.M.* counsel
9 the option to brief the issue, and stated that if counsel wished to do so they should
10 contact the Court. *Id.* at 69:21-25.

14 On October 4, 2019, *M.M.M.* counsel submitted a letter to the Court stating
15 that counsel were "concerned that the Government's proposal as set forth in
16 footnotes 6 and 7 of its Opposition could lead to the same problems that gave rise to
17 the claims in *MMM* and *Dora*," and that counsel "believe that a process in which
18 parents and children jointly decide on reunification, and have the option to reunify
19 for a joint reasonable fear and credible fear screening, would avoid violating parents'
20 and children's rights to seek relief from removal." Letter, ECF No. 480, at 1. *M.M.M.*
21 counsel suggest that the Court defer ruling on the government's process as laid out
22 in the footnotes until after it decided the *Ms. L* Plaintiffs' Motion to Enforce, to "give
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1 the parties an opportunity to work out the details of an appropriate process – with
2 the input of relevant stakeholders – in light of the Court’s decision.” *Id.* at 2.

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4 The Court should rule on the pending Motion to Enforce, including any ruling
5 related to the Government’s footnotes 6 and 7 that may be necessary or appropriate,
6 and reject *M.M.M.* counsel’s suggestion to delay resolution of the issues briefed in
7 that motion. As the government stated at the hearing, Defendants need full clarity on
8 the issues briefed in the pending motion and their opposition. Defendants have laid
9 out their views clearly, including on the issue of how to treat parents separated for a
10 section 1326 prosecution. Counsel’s letter improperly suggests that this Court should
11 allow those referred for prosecution for, and convicted of, an offense under section
12 1326 to stay indefinitely in the United States (even though a violation of section
13 1326 is a serious felony and those who illegally re-enter and whose previous orders
14 of removal are reinstated are barred from seeking asylum) (Letter at 1),
15 simultaneously suggests that the Court should decline to rule fully on the pending
16 motion (Letter at 2), and further maintains that *M.M.M.* counsel should be able to
17 engage in a new round of negotiations about settlement relief (Letter at 2). None of
18 those requests is proper. Defendants have laid out their position with regard to this
19 category of individuals in their brief, and counsel for *M.M.M.* have responded to the
20 Court’s invitation to submit briefing on this issue by submitting their letter to the
21 Court. Counsel should not be permitted to decline the Court’s invitation to brief the
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1 issue and then seek a further opportunity to negotiate the issue only after they learn
2 how the Court intends to rule with regard to the broader issues in the pending
3 Motion. Defendants believe that this issue—along with other issues in the pending
4 Motion—is ripe for decision by this Court, and that further delaying any decision on
5 this issue is unnecessary.
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8 DATED: October 16, 2019

Respectfully submitted,

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Deputy Assistant Attorney General
12 WILLIAM C. PEACHEY
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16 /s/ Nicole N. Murley
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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is Box 868, Ben Franklin Station, Washington, DC 20044. I am not a party to the above-entitled action. I have caused service of the accompanying **DEFENDANTS' RESPONSE TO MMM PLAINTIFFS' OCTOBER 4, 2019 LETTER TO THE COURT, ECF NO. 480** on all counsel of record, by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically provides notice.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: October 16, 2019

s/Nicole N. Murley
Nicole N. Murley